

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

JOHN BEATTY,

Plaintiff,

v.

WHOLE FOODS MARKET  
GROUP, INC.

Defendant.

Civil Action No. 18-10610

**DEFENDANT WHOLE FOODS MARKET GROUP, INC.'S MOTION TO DISMISS**

In accordance with Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, Defendant Whole Foods Market Group, Inc.<sup>1</sup> ("Whole Foods" or "Defendant") hereby moves to dismiss the complaint ("Complaint") filed by Plaintiff John Beatty ("Beatty" or "Plaintiff") with prejudice and without leave to amend.

As set forth in the accompanying Memorandum of Law in Support of Defendant Whole Foods Market Group, Inc.'s Motion to Dismiss, Plaintiff's vague claim of discrimination must be dismissed because he failed to exhaust his administrative remedies by filing a Charge of Discrimination with the Massachusetts Commission Against Discrimination and/or the Equal Employment Opportunity Commission. Even if Beatty had filed a Charge of Discrimination at the MCAD or EEOC, however, his Complaint still fails as a matter of law because he has not stated a cognizable legal claim under the pleading standard required by Fed. R. Civ. P. 12(b)(6). Moreover, his Complaint fails to plausibly allege that any unlawful employment practices occurred

<sup>1</sup> Beatty's Complaint variously identifies the Defendant as "Whole Foods Market, Inc." and "Whole Foods Market." The full name of the registered entity is "Whole Foods Market Group, Inc."

within the 300-day limitations period for discrimination claims under state or federal law.

Accordingly, as is further detailed in the accompanying Memorandum, Plaintiff's Complaint should be dismissed as a matter of law.

/s/ Emily J. Nelson

Andrew L. Eisenberg (BBO #152120)

*aeisenberg@constangy.com*

Jonathan D. Persky (BBO #666651)

*jpersky@constangy.com*

Emily J. Nelson (BBO #681812)

*enelson@constangy.com*

CONSTANGY, BROOKS, SMITH & PROPHETE LLP

535 Boylston Avenue, 9th Floor

Boston, MA 02116

Telephone: 617.849.7880

Facsimile: 617.849.7870

Dated: April 5, 2018

**CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(A)(2)**

In accordance with Local Rule 7.1(a)(2), I certify that I made a good faith attempt to confer with Plaintiff in advance of making this filing, but have been unable to resolve or narrow the issues raised in this motion as of this time.

/s/ Emily J. Nelson

Emily J. Nelson

**CERTIFICATE OF SERVICE**

I, Emily J. Nelson, hereby certify that, on this April 5, 2018, a true and correct copy of the foregoing document was electronically filed and served upon the Plaintiff and all counsel of record via CM/ECF.

/s/ Emily J. Nelson

Emily J. Nelson